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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,798	01/28/2004	Paul C. Probst	PROB100USA	3999
24339	7590	06/12/2007		
JOEL D. SKINNER, JR. SKINNER AND ASSOCIATES 212 COMMERCIAL ST. HUDSON, WI 54016			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 06/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/766,798

Applicant(s)

PROBST, PAUL C.

Examiner

Joseph F. Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 10, 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 10 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 4, 21, and 23 are objected to because of the following informalities:
 - a. claim 4, line 1, "Vibrating/oscillating motor" should read --vibratory, oscillating motor mechanism--;
 - b. claim 4, line 2, "Rpm's" should read --RPM--;
 - c. claim 21, line 2, "vibrating/" should read --vibratory, --;
 - d. claim 23, line 1, "the motor mechanism" should read --the vibratory, oscillating motor mechanism--;
 - e. claim 23, line 2, "RPM" should read --RPM/strokes per minute--.Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
3. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The specification does not teach the orientation of the bicycle seat in relation to a bicycle frame. Because the specification fails to convey to one skilled in the art that Applicant, at the time the application was filed, has possession of a bicycle seat with a long axis substantially parallel to the plane

of the frame and wheels of the bicycle, there exists a lack of written description of this claim limitation.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

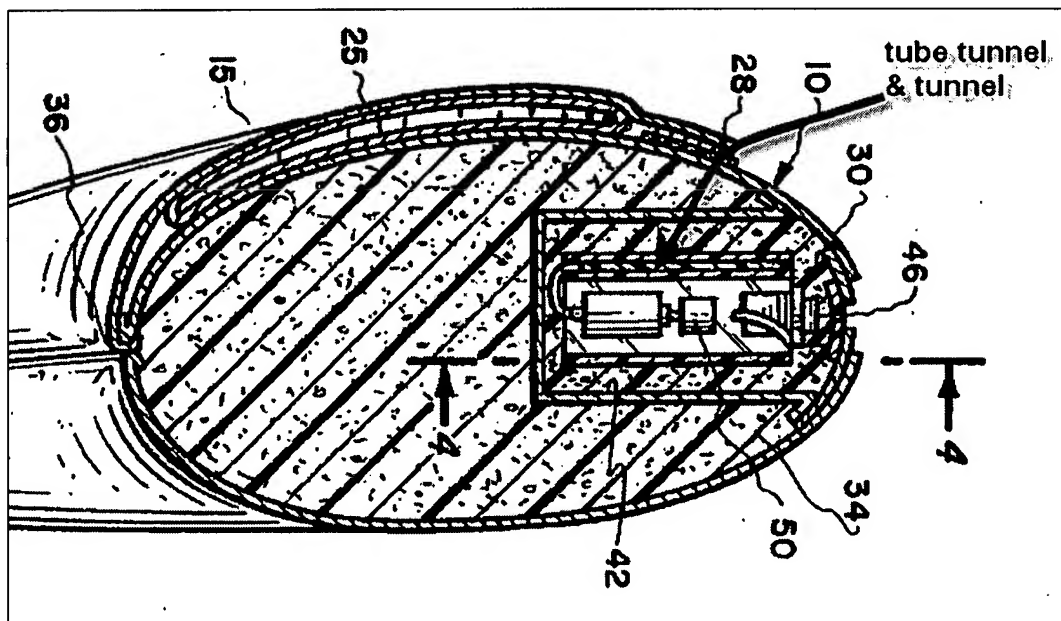
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4, 10, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2004/0021347 A1 to Turudich in view of U.S. Patent No. 5,344,437 to Pistay.

Turudich discloses a seat that is basically the same as that recited in claims 1, 4, 10, and 20-24 except that the seat lacks a tube tunnel and tube, as recited in the claims. See Figures 1-4 of Turudich for the teaching that the seat has a shell 13 (see Fig. 2), spaced apart rods 18,19, an electric vibratory, oscillating motor mechanism 11, a power source 25 connected to the motor mechanism, and a control 26 connected to the motor mechanism and power source wherein the motor vibrates at frequencies above 3000 RPM and the seat is made of composites and the motor mechanism and power source extend along a long axis of the seat. Pistay shows a seat similar to that of Turudich wherein the seat has a concave tube tunnel (see Diagram A below), a tube firmly disposed within and filling the tube tunnel, and a vibratory, oscillating motor mechanism 44 (see Fig. 4) within the tube. Therefore, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to modify the seat shell such that it includes a tube tunnel affixed to the underside of the seat shell and extending front to back along the length of the seat and in communicative contact with the rods, a tube firmly disposed within and filling the tube tunnel, and the motor mechanism and power source being in the tube, such as the seat disclosed in Pistay. One would have been motivated to make such a modification in view of the suggestion in Pistay that the tube tunnel and tube configuration allows for the entire configuration to be removed from the seat for maintenance. Moreover, the tube tunnel and tube housing the motor mechanism and power source would have been obvious to one skilled in the art when taking into account the inferences and creative steps that one skilled in the art would employ.



Annotated Figure 3 of Pistay

Although the tapering tube shape of claims 22 is not specifically taught in Turudich in view of Pistay, it would have been an obvious matter of design choice to make the specific thicknesses since such a modification would have involve a mere change in size of the tube. A change in size is generally recognized as being within the level of ordinary skill in the art.

Although the frequency of claim 23 is not specifically recited, modifying the frequency would have been obvious at the time of Applicant's invention because the use of optimum workable ranges discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify to lower the frequency by 200 RPM since the Applicant has not disclosed that having the specific frequency solves any stated problem or is for any particular purpose and it appears that the motor would perform equally well with an well known frequency used in the art.

Response to Arguments

6. Applicant's arguments with respect to the previous rejection of claims 1 and 24 as being unpatentable over Turudich in view of Gordon have been considered but are moot in view of the new ground(s) of rejection. With respect to the 35 U.S.C. 112, first paragraph, rejection of claim 24, Applicant states that the recited orientation of the seat relative to the bicycle frame is well known in the art. However, the orientation of a seat relative to a bicycle frame may come in many different orientations. For example, see USPN 204,636 to Unzicker, USPN 3,874,730 to Marchello and USPN 5,873,626 to

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Katz. Because the orientation recited in claim 24 was not convey to one skilled in the art at the time the application was filed, the rejection is maintained.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

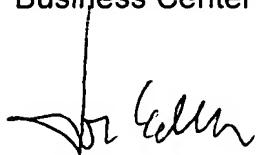
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Joe Edell", with a stylized flourish at the end.

Joe Edell
June 7, 2007